IN THE HIGH COURT OF JUDICATURE AT BOMBAY :
NAGPUR BENCH : NAGPUR.

CRIMINAL WRIT PETITION No. 349/2022.

Dr. Uday s/o Bhujbal Thakre,
Aged about 47 years, Occupation –
Scientific Officer, resident of
Gayatri Nagar, Near Khadu Karkhana,
Behind Jangid Mangal Karyalaya,
Kaulkhed Road, Akola, Tahsil
and District Akola. ... PETITIONER.

VERSUS

Dr.Sau. Shilpa w/o Uday Thakre,
Aged about 41 years, Occupation –
Doctor, resident of c/o.Shri Keshavrao
Shankarrao Deshmukh, Behind
Swarasvati Girls School, Nityanand
Nagar, Gaurakshan Road, Akola,
Tahsil and District Akola. ... RESPONDENT.

Mr. U.J. Deshpande, Advocate for the Petitioner.
Mr. S.G. Joshi, Advocate for the Respondent.

CORAM : VINAY JOSHI, J.

DATE : AUGUST 23, 2022.

ORAL JUDGMENT :

Heard learned Counsel for the parties. Considering the controversy raised and by consent of the parties, the matter is taken up for final disposal by issuing Rule, making the same returnable forthwith.

2. The petitioner has impugned herein an order dated 04.02.2022 passed below Exh.98 in E-Petition No.29/2017 by the Family Court, Akola, by which the Family Court has declined to examine the medical officer on commission.

3. It may be stated in brief that the respondent – wife has filed an application seeking maintenance in terms of Section 125 of the Code of Criminal Procedure. In said application, the petitioner – husband has applied for examining three medical officers in his defence. The said application was rejected by the Family Court, that is why the petitioner has filed Criminal Writ Petition No.74/2020. In said Writ Petition, this Court has considered the necessity of examining the doctors in defence, and accordingly permitted the

petitioner to examine them. This Court has also permitted to adduce the evidence of the medical officers either through Court Commissioner or via Video Conferencing.

4. The record indicates that for a longer period no effective steps were taken. The petitioner has applied for appointment of Court Commissioner for recording evidence, on which the Court below permitted to adduce evidence through video conferencing. It reveals that though the petitioner paid bhatta, there was no further progress. Lateron the petitioner again applied for appointment of Court Commissioner vide Exh.98, however, the Family Court has rejected said application, which order is impugned in the present writ petition.

5. The other side has raised an objection that having regard to the nature of dispute, there is no necessity to examine the medical officers. Infact by virtue of the earlier order of this Court in Writ Petition No.74/2020 dated 02.12.2020, the said objection has been foreclosed. Now the only aspect is about compliance of the order of this Court by which the examination of medical officers is permitted.

The Family Court while rejecting the application – Exh.98, took a hyper-technical approach that the petitioner ought to have resorted either of the mode i.e. by video conferencing or through Court Commissioner. Infact the very purport of the order of this Court is to examine the medical officers, apart from the mode and manner. On the wake of the order of this Court, the Family Court has fell in error in rejecting the application filed by the applicant without substantial reasons.

6. The learned Counsel appearing for the respondent has pointed out that due to delay caused by the petitioner [husband], hearing of the maintenance proceeding is prolonged and for this the wife is deprived of her legitimate right. Infact the Family Court is well empowered to pass interim order, if the circumstances so warrant. Besides that there can be no dispute that the maintenance proceeding has to be expeditiously disposed of.

It is one of the objection of the respondent that the petitioner once opted the mode of video conferencing, he cannot be permitted to resort to another mode i.e. of Court Commissioner. The said submission is too technical, as the endeavor is to examine

the witness as permitted by this Court. Any how the examination of witness is material, apart from its mode and manner.

7. In view of that the impugned order dated 04.02.2022 passed on Exh.98 in E-Petition No.29/2017 by the Family Court, Akola is hereby quashed and set aside. The petitioner is permitted to examine medical officers through Court Commissioner, at his cost. The Family Court shall set out the terms of the Court Commissioner and appoint a suitable person for said purpose. The petitioner shall take expeditious steps to examine the witness on Commission, without seeking for adjournment.

Since the maintenance petition is pending from last 5 years, the Family Court shall decide the same within a period of 6 months from the date of receipt of this order.

8. Writ Petition is accordingly allowed and disposed of. Rule is made absolute in the aforesaid terms with no order as to costs.

JUDGE

Signed By:RAKESH GANESHLAL DHURIYA
Private Secretary
High Court of Bombay, at Nagpur
Signing Date:25.08.2022 11:33